

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

JEFF MCMAHAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-12-008-JHP
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**FINDINGS AND RECOMMENDATION**

This matter comes before this Court on Petitioner's Motion Under § 2255 to Vacate, Set Aside, or Correct Sentence filed January 6, 2012 (Docket Entry #1). By Order entered March 6, 2013, United States District Judge James H. Payne, the judge presiding over this case, referred the subject Motion to the undersigned for the purpose of entering Findings and a Recommendation as to its final disposition.

Petitioner's Motion alleged six separate issues for consideration in urging a modification to his sentence. On April 12, 2013, this Court conducted a telephonic pretrial conference in anticipation of an evidentiary hearing on the Motion. After consultation with counsel, this Court determined that Petitioner maintained only a single issue for consideration of his Motion - ineffective assistance of his trial counsel. As a result, Petitioner sought and obtained the dismissal of the remaining five counts contained in the Motion on April 29, 2013.

On the single issue of ineffective assistance of counsel,

Petitioner's counsel was directed to ascertain whether Petitioner would be entitled to any modification of his sentence in the event he prevailed on his argument. A evidentiary hearing was set on the single claim.

After the telephonic conference, Respondent filed a Motion to Strike Evidentiary Hearing contending Petitioner was not entitled to and had not requested a hearing. Petitioner responded that he had discovered his sentence would not change even if he prevailed on his claim. He stated that he anticipated the parties would author an agreed order resolving the Motion. In light of these statements, this Court struck the previously set evidentiary hearing.

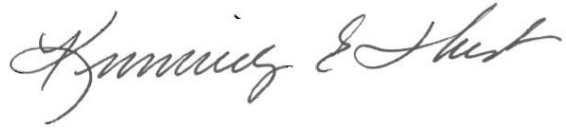
This Court would recommend to the presiding judge that Petitioner and Respondent be given a period of time by which to submit an agreed order. With the submission and execution of a satisfactory order by the Court, the matter should be concluded.

BASED UPON THE FOREGOING, IT IS THE RECOMMENDATION OF THE UNDERSIGNED that the parties be given a period of time by which to submit an agreed order resolving Petitioner's Motion Under § 2255 to Vacate, Set Aside, or Correct Sentence filed January 6, 2012 (Docket Entry #1). It is anticipated that the agreement would not require any alteration or modification of Petitioner's sentence.

The parties are herewith given fourteen (14) days from the date of the service of these Findings and Recommendation to file

with the Clerk of the court any objections, with supporting brief. Failure to object to the Findings and Recommendation within fourteen (14) days will preclude appellate review of the judgment of the District Court based on such findings.

IT IS SO ENTERED this 6<sup>th</sup> day of May, 2013.

A handwritten signature in cursive script, appearing to read "Kimberly E. West".

KIMBERLY E. WEST  
UNITED STATES MAGISTRATE JUDGE